

SBCivil Writ Petition No.4937/1993

Mohd. Kallan
VS.
State of Rajasthan & Ors.

Date of Order :: 10th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. Shyam Ladreacha, Addl.Govt.Advocate.

....

By this petition for writ a direction is sought by the petitioner to regularise his service as Driver w.e.f. 1.7.1983.

Appointment was given to the petitioner as a Chainman under an order dated 17.11.1979 and thereafter on being declared surplus he was ordered to be absorbed as Class-IV employee w.e.f. 1.7.1983. It is asserted by the petitioner that he was not relieved to join as Class-IV employee as the respondents were in need of a Driver, accordingly the respondents utilised his service as a Driver. Neither his services are regularised nor promotion is given to him as Driver though the respondents are utilising his services as Driver since 1983.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is working as Chainman in the department but his services are utilised as Driver. It is further

stated that being a Chainman i.e. the post in Rajasthan Forest Subordinate Service the petitioner is not having any avenue for promotion to the post of Driver.

In rejoinder to reply it is stated by the petitioner that on declaring surplus the petitioner was ordered to be absorbed as Class-IV employee but the respondents choose to utilise his service as Driver, therefore, he cannot be termed and treated as a Chainman. His services are either required to be treated as Driver or as a Class-IV employee and if he is treated as Class-IV employee then he is eligible and entitled to be considered for promotion as Driver.

Heard counsel for the parties.

The respondents admittedly utilising services of the petitioner as Driver since 1.7.1983. The petitioner was declared surplus from the post of Chainman and was ordered to be absorbed as Class-IV employee but the respondents considered it appropriate to utilise services of the petitioner as Driver. This fact clearly establishes that the respondents were in need of a Driver and despite an order to absorb the petitioner as Class-IV employee his services were taken as Driver. In view of the factual position above the petitioner from the day of getting declared surplus is working as Driver with the respondents,

therefore, he is deemed to be absorbed as a Driver since then.

Accordingly, this petition for writ is allowed. The respondents are directed to treat the petitioner absorbed on the post of Driver from the date the respondents are utilising his service as such. The petitioner shall be entitled for all consequential benefits.

(GOVIND MATHUR),J.

kkm/ps.